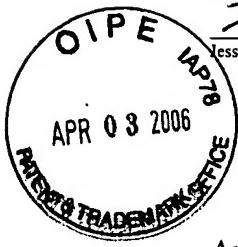


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Jessica C. Stahnke Date

April 3, 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application of: Dae Deug Park

Confirmation No.: 6794

Serial No.: 10/747,911

Art Unit: 3682

Filed: December 29, 2003

Examiner: Luong, Vinh

For: *Pedal Apparatus for a Vehicle*

Attorney Docket No.: 060944-0183-US

BRIEF ON APPEAL FEE TRANSMITTAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The applicant's Brief on Appeal in the above-entitled application is submitted herewith. The item(s) checked below apply:

- The Brief filing fee is \$500.00
 Applicant has qualified for the 50% reduction in fee for an independent inventor, nonprofit organization or small business concern and the Brief filing fee is \$250.00
The brief filing fee is:
 Required.
 Not required. (Fee paid in prior appeal.)
 Please charge the required Brief filing fee to Morgan, Lewis & Bockius LLP Deposit Account No. 50-0310 (order no. 060944-0183). A copy of this sheet is enclosed.

Respectfully submitted,



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04-04-06

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April 3, 2006

Jessica C. Stahnke

Date

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PATENT

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MAIL STOP APPEAL BRIEF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. §1.192

Sir:

This brief is in furtherance of the Notice of Appeal, filed in the above-identified patent application on October 4, 2005. Appellant appeals the final rejection dated April 4, 2005. Thee fee required under 37 C.F.R. 41.20(b)(2) and the appropriate extension of time fee are being filed concurrently herewith.

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TABLE OF CONTENTS

<u>Section Title</u>	<u>Page</u>
I. REAL PARTY IN INTEREST	3
II. RELATED APPEALS AND INTERFERENCES	4
III. STATUS OF CLAIMS	5
IV. STATUS OF AMENDMENTS FILED SUBSEQUENT TO THE FINAL REJECTION	6
V. SUMMARY OF CLAIMED SUBJECT MATTER	7
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	9
VII. ARGUMENT	10
VIII. CLAIMS APPENDIX	14
IX. EVIDENCE APPENDIX	16
X. RELATED PROCEEDINGS APPENDIX	17

Express Mail No. EV 553 728 655 US

Dae Deug Park
10/747,911
APPEAL BRIEF
Page 3

I. REAL PARTY IN INTEREST

The real party in interest in this application is Hyundai Motor Company, the assignee.

II. RELATED APPEALS AND INTERFERENCES

No other appeals or interferences that would directly affect, be directly affected by, or have a bearing of any kind on the Board's decision in this appeal are known to Appellant or to Appellant's legal representatives.

III. STATUS OF CLAIMS

The application as filed contained claims 1-8.

In the amendment of March 9, 2005, Applicant amended claim 4 to overcome an indefiniteness rejection under 35 U.S.C. §112, second paragraph; amended claims 1 and 7 to include the limitations of original claim 2 to overcome a rejection under 35 U.S.C. §102(a) as allegedly being anticipated by Claude, and a rejection under 35 U.S.C. §102(b) as allegedly being anticipated by Gaetano; canceled claim 2; and added new claim 9 to further define the present invention.

In the amendment of July 5, 2005, no amendments were made to the claims.

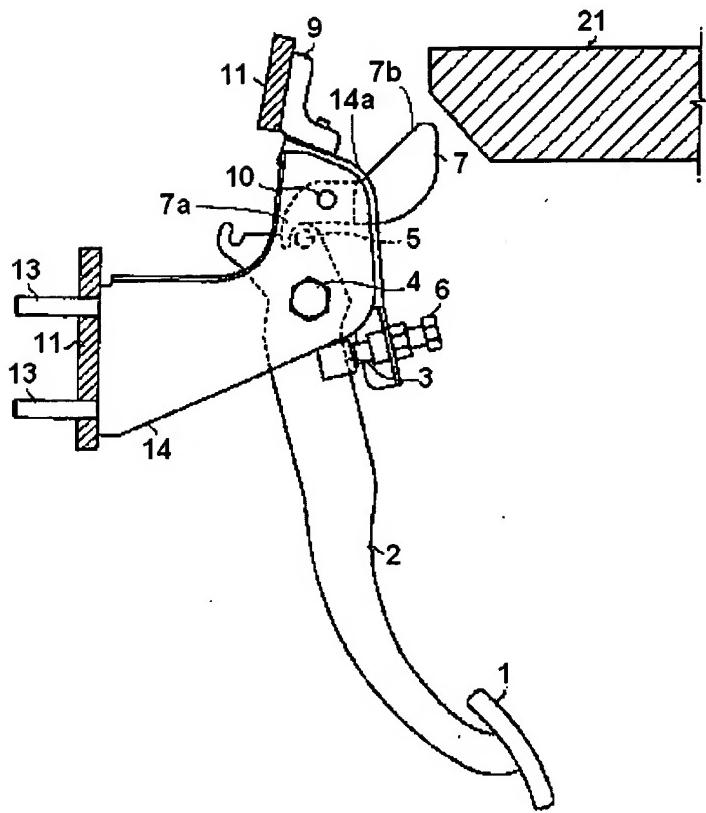
The claims now pending in this application are claims 1 and 3-9. Claims 1 and 3-9 were rejected, and are the claims on appeal.

IV. STATUS OF AMENDMENTS FILED SUBSEQUENT TO THE FINAL REJECTION

No amendments were made to the claims after final rejection. Non-substantive amendments were made to the specification, which amendments have been entered by the Examiner.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Fig. 2



A supporting bracket 14¹ is fixed to a dash panel 11.² A pedal arm 2³ has a first pin 4⁴, a second pin 5⁵, and a foot pad 1. The first pin 4 is pivotally supported by the supporting bracket 14⁶ such that the pedal arm 2 can rotate around the first pin 4. Lever 7⁷ has a third pin 10⁸ through which it is pivotally connected to supporting bracket 14⁹. Lever 7 also has a hook portion 7a¹⁰ at one end, hooked to second pin 5,¹¹ and an impact portion 7b¹² at the other end. Impact portion 7b is opposite a striking portion 21^{13,14}, which is a separate structure formed on the dash panel 11 or on a mounting plate for a steering wheel (not shown).

¹ Supporting bracket 14: paragraph [0018], lines 2-4; paragraph [0019].

² Supporting bracket 14 fixed to dash panel 11: paragraph [0018], lines 2-4; paragraph [0019].

³ Pedal arm 2: paragraph [0020].

⁴ First pin 4: paragraph [0020], lines 1-4

⁵ Second pin 5: paragraph [0020], lines 1-4

⁶ First pin 4 pivotally connected to and supported by supporting bracket 7: paragraph [0020], lines 4-6.

⁷ Lever 7: paragraph [0021].

⁸ Third pin 10: paragraph [0021], lines 1-2.

⁹ Lever 7 pivotably connected via third pin 10 to supporting bracket 14: paragraph [0021], lines 1-2.

¹⁰ Hook portion 7a: paragraph [0024], lines 1-2.

¹¹ Lever 7 hooked to pedal arm 2 via second pin 5: paragraph [0021], line 3; paragraph [0024], lines 1-3.

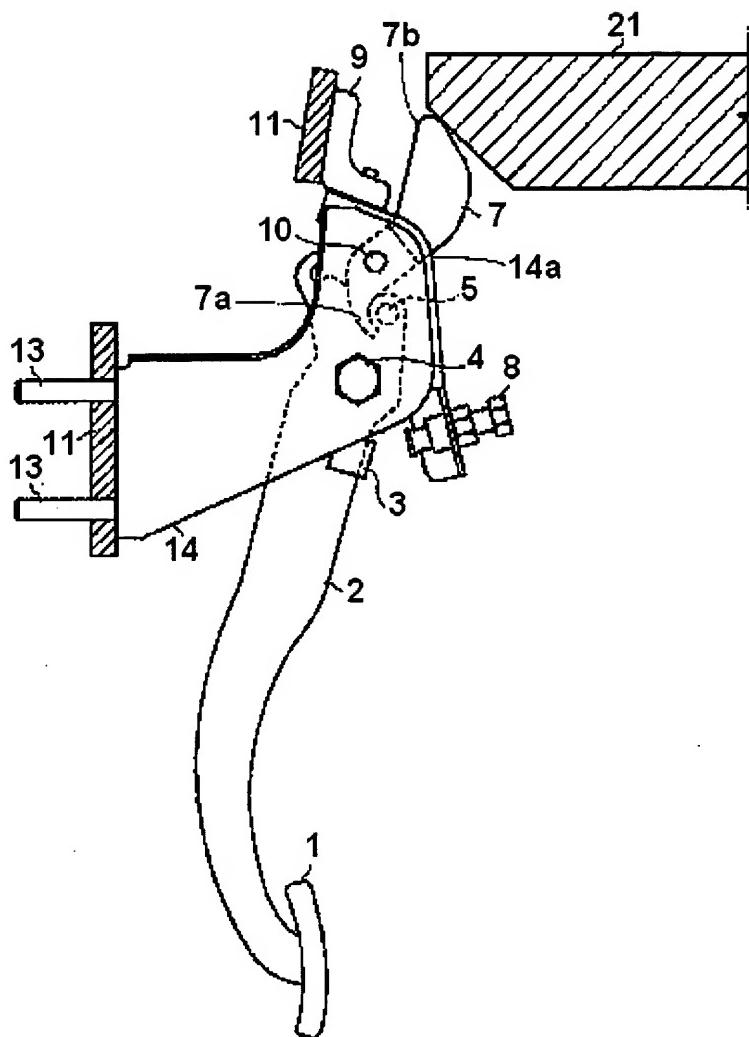
¹² Impact portion 7b, also called an impact end: paragraph [0021], lines 3-5; paragraph [0023], lines 3-4.

¹³ Striking portion 21, also called a striking member: paragraph [0022]

¹⁴ Impact portion 21 is opposite the striking portion 7b: paragraph [0022], lines 1-2.

When a front impact occurs, dash panel 11 is deformed such that the apparatus, save striking portion 21, moves rearward (right in the drawings). Impact portion 7b of lever 7 strikes striking portion 21¹⁵, rotating lever 7 counterclockwise around third pin 10. Hook portion 7a, moved toward the rear of the vehicle (right) by this rotation, pulls second pin 5 rearwards (right), rotating pedal arm 2 clockwise around first pin 4¹⁶ such that the lower end moves forward (left), away from the driver.

Fig. 3



¹⁵ Lever 7 struck by striking portion/striking member 21: paragraph [0023].

¹⁶ Lever 7 causes pedal arm 2 to rotate: paragraph [0024], lines 3-5.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1 and 3-8 are unpatentable under 35 U.S.C. §102(b) over Gaetano et al. (EP 0 827 885 A1).
- B. Whether claim 9 is unpatentable under 35 U.S.C. §102(a) over Mencarelli et al. (EP 1 247 710 A1).

VIII. ARGUMENT

Rejection under 35 U.S.C. §102(b) over Gaetano et al. (Claims 1 and 3-8)

Inventive lever (claims 1 and 7) vs. Gaetano's hook member

Gaetano et al.

Gaetano et al. teaches a brake pedal 10 kept in its normal operation position of FIG 1 by hook member 30 (column 2 lines 39-41). In the event of a frontal collision, support 16 transmits rearward (to the right in the FIGs.) movement to hook 30 (column 3 lines 1-3), causing hook 30 to rotate counterclockwise to lift rear end recess 31 and release pin 21 (column 3 lines 5-9). Gaetano's bracket 20 and pedal 10 are thus free to rotate by torque received from the pedal 10 (column 3 lines 9-12, emphasis added).

Claim 1

Gaetano does not teach or suggest "a lever...causing the pedal arm to rotate in a direction of the front of the vehicle by torque transferred from the lever" under deformation by a front impact of the vehicle (inventive claim 1, lines 6-8, emphasis added). Gaetano's lever releases pin 21 in the event of a front impact and cannot, *ipso facto*, transfer torque to pedal 10.

Claim 7

Gaetano does not teach or suggest "the lever...pivots such that the first end pulls the pedal arm to a retracted position" (inventive claim 7, line 12, emphasis added) for the reasons set forth above.

Inventive striking portion (claim 1)/striking member (claim 7)**Gaetano et al.**

The Examiner mischaracterized Gaetano's steering column 40 as a striking portion/member. Gaetano's hook member 30 (allegedly corresponding to the inventive lever) is pivotally connected at point 32 to steering column 40. In an impact, pivotal connection 32 becomes a center of rotation around which hook 30 rotates, due to hook 30's rearward movement, which is caused by support 16 (column 3, lines 1-9). Merriam Webster Online defines "to strike" as "to come into contact forcefully" (<http://m-w.com/cgi-bin/dictionary>). To the extent that steering column 40 and hook 30 are in contact, via pivot point 32, they are already in contact before a collision; they do not come into contact with one another. Steering column 40 simply does not strike hook 30, and cannot be construed as a striking portion.

Assuming even for the sake of argument that steering column 40 does strike hook 30, which Applicant maintains it does not, the only contact between these two members, and thus the alleged striking, takes place at pivot point 32. Since this is the center of hook 30's rotation, any alleged striking taking place at this point cannot transfer any torque to hook 30, and thus cannot be a cause of hook 30's rotation. It therefore is not a cause of pedal 10's rotation.

Claim 1

Gaetano et al. does not teach or suggest a "lever being configured and dimensioned to be struck by a striking portion" (inventive claim 1, lines 6-7), nor does it teach or suggest such a striking "causing the pedal arm to rotate" (lines 7-8).

Claim 7

Gaetano et al. does not teach or suggest "a striking member...such that deformation of the dash panel...causes the striking member to strike the impact end of the lever" (inventive claim 7, lines 10-12) for the reasons set forth above.

Rejection under 35 U.S.C. §102(a) over Mencarelli et al. (Claim 9)

Inventive lever

Mencarelli et al. teaches a lever 9 that, in the event of a frontal collision, strikes stop 10 and rotates counter-clockwise (FIGs 1-2) to deform plate 8 such that plate 8 is flush against pedal end 40 (abstract, FIGs. 4-6). Once plate 8 has been deformed, pedal 4 is free to rotate independently of lever 9 (abstract and FIGs. 7-8, emphasis added). See especially FIGs. 7 and 8 in which end 90 of lever 9 is not even in contact with pedal 4 after an impact. It is therefore impossible for Mencarelli's lever 9 to “[pivot] such that the first end pulls the pedal arm to a retracted position” (inventive claim 9, line 13, emphasis added).

Inventive hook portion vs. Mencarelli's lever end

Further, the Examiner referred to both pin 7 and plate 8 as allegedly corresponding to the inventive second pin. Setting aside the fact that plate 8 is a plate, not a pin, Mencarelli still does not disclose or suggest that the lever has a “hook portion hooked to the second pin” (inventive claim 9, line 9). End 90 of lever 9 never comes into contact with pin 7 (FIG. 4), and it is not hooked to plate 8 for the reasons set forth above with reference to FIGs. 7 and 8.

Conclusion

Appellant respectfully submits that Gaetano and Mencarelli, whether considered individually or in combination, fail to teach or suggest the combinations of features recited in independent claims 1, 7, and 9. Moreover, appellant respectfully submits that claims 3-6 and 8, which depend either directly or indirectly from independent claims 1 and 7, are also patentable inasmuch as they recite the same combinations of allowable features, as well as reciting additional features that further distinguish over the applied prior art.

In view of the foregoing, appellant respectfully requests that the Board of Patent Appeals and Interferences reverse the Final Office Action and allow claims 1 and 3-9.

If there are any other fees due in connection with the filing of this Appeal Brief, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. §1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account No. 50-0310.

Respectfully submitted,



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April 3, 2006

Date

VIII. CLAIMS APPENDIX

- 1 1. A pedal apparatus for a vehicle, comprising:
 - 2 a supporting bracket fixed to a dash panel of the vehicle;
 - 3 a pedal arm pivotally connected to the supporting bracket, wherein the pedal arm has a
 - 4 first pin pivotally connected to the supporting bracket and a second pin at an end of the pedal
 - 5 arm opposite to an end with a foot pad; and
 - 6 a lever hooked at one end to the pedal arm, said lever being configured and dimensioned
 - 7 to be struck by a striking portion under deformation by a front impact of the vehicle causing the
 - 8 pedal arm to rotate in a direction of the front of the vehicle by torque transferred from the lever
 - 9 and wherein said lever has a third pin pivotally connected to the supporting bracket, a hook
 - 10 portion hooked to the second pin of the pedal arm, and an impact portion opposite to the striking
 - 11 portion.
- 1 3. The pedal apparatus of claim 1, wherein the striking portion is defined as an additional
- 2 structure formed on a dash panel or a mounting plate for a steering wheel.
- 1 4. The pedal apparatus of claim 3, wherein the impact portion rotates about the third pin in
- 2 the direction of the front of the vehicle such that the hook portion rotates about the third pin in a
- 3 direction of the rear of the vehicle,
- 4 and wherein the second pin hooked by the hook portion rotates about the first pin in the
- 5 direction of the rear of the vehicle such that the end of the pedal arm adhering the foot pad
- 6 rotates about the first pin in a direction of the front of the vehicle.
- 1 5. The pedal apparatus of claim 4, wherein the pedal apparatus is a brake pedal apparatus.
- 1 6. The pedal apparatus of claim 4, wherein the pedal apparatus is a clutch pedal apparatus.

1 7. A pedal apparatus for a vehicle, comprising:

2 a pedal arm configured to be pivotably mounted to a dash panel with an upper end above
3 the pivot and a lower, foot operated end below the pivot, wherein the pedal arm has a first pin
4 pivotally connected to a bracket and a second pin at an end of the pedal arm opposite to the
5 lower, foot operated end below the pivot;

6 a lever pivotably mounted to the dash panel, with a first end engaging the upper end of
7 the pedal arm and a second impact end extending opposite the first end, and wherein said lever
8 has a third pin pivotally connected to the bracket and a hook portion hooked to the second pin of
9 the pedal arm; and

10 a striking member disposed opposite the impact end of the lever such that deformation of
11 the dash panel in response to a collision causes the striking member to strike the impact end of
12 the lever which pivots such that the first end pulls the pedal arm to a retracted position.

1 8. The pedal apparatus of claim 7, wherein the pedal arm and lever are pivotably mounted
2 to the bracket that is secured to the dash panel.

1 9. A pedal apparatus for a vehicle, comprising:

2 a pedal arm configured to be pivotally mounted at a pivot point to a dash panel with an
3 upper end above the pivot point and a lower, foot operated end below the pivot point, wherein
4 the pedal arm has a first pin at said pivot point pivotally connected to a bracket and a second pin
5 disposed on the pedal arm at a point rigidly linked to the pivot point and at an end of the pedal
6 arm opposite to the lower, foot operated end;

7 a lever pivotably mounted to the dash panel, with a first end engaging the upper end of
8 the pedal arm and a second impact end extending opposite the first end, and wherein said lever
9 has a third pin pivotally connected to the bracket and a hook portion hooked to the second pin of
10 the pedal arm; and

11 a striking member disposed opposite the impact end of the lever such that deformation of
12 the dash panel in response to a collision causes the striking member to strike the impact end of
13 the lever which pivots such that the first end pulls the pedal arm to a retracted position.

Express Mail No. EV 553 728 655 US

Dae Deug Park
10/747,911
APPEAL BRIEF
Page 16

IX. EVIDENCE APPENDIX

None.

Express Mail No. EV 553 728 655 US

Dae Deug Park
10/747,911
APPEAL BRIEF
Page 17

X. RELATED PROCEEDINGS APPENDIX

None.